

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA
(CHARLESTON)**

IN RE:	:	
	:	Case No. 17-04252-dd
Moss Construction of the Low Country, LLC,	:	
	:	Chapter 7
	:	
Debtor.	:	
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	:	
Prairie Son Properties, LLC,	:	
	:	Adv. Pro. No. 17-80079-dd
Plaintiff,	:	
	:	
Michelle L. Vieira, as Chapter 7 Trustee for Moss Construction of the Low Country, LLC; Buck Lumber and Building Supply, Inc.; Creighton Likes, Jr.; Richard Zollweg and Sandra Zollweg,	:	
	:	
Defendants.	:	
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**ANSWER, AFFIRMATIVE DEFENSE, COUNTERCLAIM AND MOTION TO DISMISS
OF MICHELLE L. VIEIRA, AS CHAPTER 7 TRUSTEE FOR MOSS CONSTRUCTION
OF THE LOWCOUNTRY, LLC**

Defendant, Michelle L. Vieira, as Chapter 7 Trustee (“Trustee”) for Moss Construction of the Lowcountry, LLC (“Moss”), responding to the Complaint of the Plaintiff, Prairie Son Properties, LLC (“PSP”), would show as follows:

1. Every allegation of the Complaint not expressly admitted is hereby denied.
2. The allegations of paragraphs 1, 4, 5 and 6 are hereby admitted on information and belief.
3. The allegations of paragraphs 2 and 3 are hereby admitted.
4. The allegations of paragraphs 7, 8, 9, 10, 11, 12, 13, and 14 are admitted.
5. The allegations of paragraph 15 are denied and Trustee would ask that the language of the Mortgage be strictly construed.

6. The allegations of paragraph 16 are denied.

7. The allegations of paragraphs 17, 18 and 19 are admitted.

8. As to paragraph 20, Trustee reiterates the admissions and denials above.

9. Trustee is unable to ascertain what PSP is informed and believes but would deny all of the allegations of paragraphs 21 and 22 which assert any factual statement or claim any basis for relief.

10. As to paragraph 23, Trustee reiterates the admissions and denials above.

11. Trustee is unable to ascertain what PSP is informed and believes but would deny all of the allegations of paragraphs 24 and 25 which assert any factual statement or claim any basis for relief.

12. As to paragraph 26, Trustee reiterates the admissions and denials above.

13. The allegations of paragraph 27 are denied.

14. Trustee is unable to ascertain what PSP is informed and believes but would deny all of the allegations of paragraph 28 which assert any factual statement or claim any basis for relief.

15. As to paragraph 29, Trustee reiterates the admissions and denials above.

16. The allegations of paragraph 30 are admitted.

17. Trustee admits that the Property is rented but denies the remainder of paragraph 31.

18. The allegations of paragraphs 32 and 33 are denied.

AS AN AFFIRMATIVE DEFENSE

19. Trustee reasserts all admissions and denials above as fully as if reiterated verbatim herein.

20. To the extent that PSP is successful in avoiding any lien or transfer, such lien or transfer must be preserved for the benefit of the estate pursuant to 11 U.S.C. §551.

MOTION TO DISMISS

21. Trustee reasserts all admissions and denials above as fully as if reiterated verbatim herein.

22. The Complaint herein asserts no cause of action and seeks no relief as to the Trustee and should be dismissed pursuant to Fed.R.Bankr.P. 7012, incorporating Fed.R. Civ.Proc. 12(b)(6).

COUNTERCLAIM FOR VIOLATION OF THE STAY IMPOSED BY 11 U.S.C. §362

23. Trustee reasserts all admissions and denials above as fully as if reiterated verbatim herein.

24. Trustee is the Chapter 7 Trustee for the Debtor, Moss, which filed bankruptcy on August 28, 2017.

25. PSP is a limited liability company, organized under the laws of Georgia, doing business in South Carolina.

26. This is an adversary proceeding pursuant to Fed.R.Bankr.P. 7001 and jurisdiction in this court is appropriate pursuant to 28 U.S.C. §1334 and Local Civ. Rule 83.IX.01 (D.S.C.).

27. This is a core proceeding under 28 U.S.C. §157(b)(2)(C) and (O).

28. This Court has authority to enter a final order.

29. PSP asserts a claim secured by real estate owned by Moss (the “Bluffton Property”).

30. The Bluffton Property is currently being rented.

31. In mid August, PSP demanded of Joshua Zollweg, Kevin Campbell and Moss that the lease be transferred to it and that the rental proceeds from the Bluffton Property be paid to it.

32. Upon learning that Moss had filed Chapter 7, PSP again demanded that Moss pay the rental proceeds to it rather than the Trustee.

33. The Trustee advised that she was entitled to receive the rental proceeds and suggested that PSP file a Motion pursuant to §362 but PSP continued to demand that it receive the rent.

34. PSP has now filed this Adversary Proceeding, demanding that it receive the rental proceeds, still without filing a Motion pursuant to §362.

35. As a result, the tenant has not yet paid the rental proceeds to anyone and the Trustee has not yet received the rent from the Bluffton Property.

36. The Trustee has incurred damages as a result of this willful and intentional violation of the automatic stay.

RESERVATION OF RIGHTS

37. Trustee reasserts all admissions and denials above as fully as if reiterated verbatim herein.

38. Trustee is engaged in other adversary proceedings with some of the named defendants herein and does not restate or duplicate those claims here. In so doing, Trustee does not abandon or waive but expressly reserves the causes of action and claims asserted in other litigation.

Wherefore, having answered the Complaint filed by PSP, Trustee asks that the relief requested in the Complaint be denied, that the Complaint be dismissed for failure to state a cause of action against the Trustee, that her affirmative defenses be recognized and protected, that she be awarded damages for the knowing and willful violation of the stay imposed by 11 U.S.C. §362, that her other claims be preserved, and for such other and further relief as the Court deems appropriate.

Respectfully submitted,

By: /s/ Barbara George Barton

Barbara George Barton, #1221

Christine E. Brimm, #6313

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Attorneys for Trustee

Dated: September 28, 2017

**UNITED STATES BANKRUPTCY COURT
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(CHARLESTON)**

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Prairie Son Properties, LLC,	:	
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Plaintiff,	:	
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Michelle L. Vieira, as Chapter 7 Trustee for	:	
Moss Construction of the Low Country,	:	
LLC; Buck Lumber and Building Supply,	:	
Inc.; Creighton Likes, Jr.; Richard Zollweg	:	
and Sandra Zollweg,	:	
	:	
Defendants.	:	
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CERTIFICATE OF SERVICE

I, Connie Fraser, hereby certify that on behalf of the Chapter 7 Trustee, I served a copy of the **ANSWER, AFFIRMATIVE DEFENSE, COUNTERCLAIM AND MOTION TO DISMISS OF MICHELLE L. VIEIRA, AS CHAPTER 7 TRUSTEE FOR MOSS CONSTRUCTION OF THE LOW COUNTY, LLC, filed September 28, 2017**, on the Office of the United States Trustee via electronic filing and electronic transmission through CM/ECF, pursuant to SC LBR 9036-1, and on the parties in interest as shown below, via CM/ECF and/or U.S. Mail, as indicated, on September 28, 2017.

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Via Regular Mail

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September 28, 2017